

AMENDED IN SENATE AUGUST 5, 2002

AMENDED IN SENATE JULY 3, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

AMENDED IN ASSEMBLY APRIL 5, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 270

Introduced by Assembly Member Correa

February 16, 2001

~~An act to amend Sections 5000 and 5015.6 of the Business and Professions Code, relating to professions. An act to amend Sections 5000, 5003, 5015.6, 5020, 5063, and 5100 of, to add Sections 5000.5, 5063.1, 5063.2, 5103, 5108, 5109, and 5109.5 to, and to repeal and amend Section 5076 of, the Business and Professions Code, relating to accountancy, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 270, as amended, Correa. Professions: ~~membership of regulatory boards~~ accountancy.

Existing law provides for the licensing and regulation of accountants by the State Board of Accountancy in the Department of Consumer Affairs. The provisions creating the board, specifying the board's composition, and authorizing the board to appoint an executive officer will become inoperative on July 1, 2006, and will be repealed on January 1, 2007.

This bill would change these dates, making the provisions inoperative on July 1, 2005, and repealing them on January 1, 2006. The bill would

increase the number of members on the board from 11 to 13 by increasing the number of public members from 5 to 7. The bill would revise the qualification requirements for certain members of the board.

Existing law provides that each board or commission in the Department of Consumer Affairs facing a statutory repeal date has the burden of establishing a compelling need for its continuation to the Joint Legislative Sunset Review Committee. Existing law limits this review in the case of the Board of Accountancy.

This bill would expand that review regarding the Board of Accountancy to include consideration of reports and studies specified in the law regulating accountancy.

Existing law authorizes the board to conduct investigations or hearings relating to any matter involving the conduct of licensees. Existing law authorizes the board to appoint an administrative committee for the purpose of obtaining technical expertise. Existing law authorizes the board to vest this committee with the powers of the board for specified purposes.

This bill would delete the authority to vest the powers of the board in this committee.

Existing law authorizes the board, after notice and hearing, to revoke, suspend, or refuse to renew any permit or certificate, as specified, or to censure the holder of that permit or certificate for unprofessional conduct. Under existing law, unprofessional conduct includes a conviction for a crime substantially related to the qualifications, functions, and duties of a certified public accountant or public accountant, and dishonesty, fraud, or gross negligence in certain duties. Existing law requires, with respect to standards of professional conduct, a licensee to report to the board in writing, within 30 days of the time the licensee has knowledge of certain events concerning the licensee, including the conviction of a crime.

This bill would require a licensee to report other specified events concerning the licensee, including certain civil judgments and settlements. It would also require courts and specified insurers and surplus brokers to report certain events to the board. This bill would expand the definition of unprofessional conduct to include repeated negligence indicating a lack of competency and would provide the board with subpoena power and the authority to proceed in an investigation or action in specified circumstances.

Existing law requires an applicant for licensure as a certified public accountant to demonstrate experience in the attest function. A firm,



other than a sole proprietor or a small firm, is required to meet specified peer review requirements in order to provide attest services and an individual applicant is required to meet specified criteria to sign reports on attest engagements. The board is required to adopt regulations implementing, interpreting, and making specific the peer review requirements.

This bill would require the board to report to the Legislature and the department by September 1, 2003, concerning the peer review program.

This bill would also require the board to report to the Legislature by September 1, 2003, on problems with respect to the policing and disciplining of accountants employed by a large public accounting firm.

Existing law appropriates all money in the Accountancy Fund to the board to carry out provisions of the law relating to accountancy.

This bill would make an appropriation because it authorizes the board to expend money in the fund for additional purposes.

~~Existing law, operative until July 1, 2002, provides for the licensure and regulation of the practice of accountancy by the Board of Accountancy, consisting of 10 members. Existing law, operative until July 1, 2002, authorizes the board to appoint an executive officer to exercise the powers and perform the duties delegated by the board.~~

~~This bill would increase the membership of the Board of Accountancy to 11 and would revise the composition of that board. The bill would change the termination date of the board and the executive officer from July 1, 2002, to July 1, 2006.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1.—Section 5000 of the Business and Professions~~
- 2 ~~SECTION 1. Section 5000 of the Business and Professions~~
- 3 ~~Code is amended to read:~~
- 4 ~~5000. There is in the Department of Consumer Affairs the~~
- 5 ~~California Board of Accountancy, which consists of—11 13~~
- 6 ~~members, six of whom shall be licensees, and—five seven of whom~~
- 7 ~~shall be public members who shall not be licentiates of the board~~
- 8 ~~or registered by the board. The board has the powers and duties~~
- 9 ~~conferred by this chapter.~~
- 10 ~~The Governor shall appoint—three five of the public members,~~
- 11 ~~and the six licensee members as provided in this section. The~~

1 Senate Rules Committee and the Speaker of the Assembly shall
2 each appoint a public member. In appointing the six licensee
3 members, the Governor shall appoint members representing a
4 cross section of the accounting profession with at least two
5 members representing a small public accounting firm, *and with no*
6 *more than one member representing a large public accounting*
7 *firm.* For the purposes of this chapter, a small public accounting
8 firm shall be defined as a professional firm that employs a total of
9 no more than four licensees as partners, owners, or full-time
10 employees in the practice of public accountancy within the State
11 of California. *For purposes of this chapter, a large public*
12 *accounting firm means one of the four public accounting firms with*
13 *the greatest number of licensees who are partners, owners, or*
14 *full-time employees in the practice of public accountancy within*
15 *the State of California.*

16 This section shall become inoperative on July 1, ~~2006~~ 2005, and
17 as of January 1, ~~2007~~ 2006, is repealed, unless a later enacted
18 statute, that becomes effective on or before January 1, ~~2007~~ 2006,
19 deletes or extends the dates on which this section becomes
20 inoperative and is repealed. The repeal of this section renders the
21 board subject to the review required by Division 1.2 (commencing
22 with Section 473). However, the review of the board shall be
23 limited to ~~only reports or studies specified in this chapter and those~~
24 issues identified by the Joint Legislative Sunset Review
25 Committee and the board ~~pursuant to~~ regarding the
26 implementation of new licensing requirements.

27 SEC. 2. Section 5000.5 is added to the Business and
28 Professions Code, to read:

29 5000.5. No public member shall be a current or former
30 licensee of the board or a close family member of a licensee, or be
31 currently or formerly connected with the accountancy profession,
32 or have any financial interest in the business of a licensee. Each
33 public member shall meet all of the requirements for public
34 membership on the board as set forth in Chapter 6 (commencing
35 with Section 450) of Division 1.

36 SEC. 3. Section 5003 of the Business and Professions Code is
37 amended to read:

38 5003. The officers of the board are a president, vice president
39 and a secretary-treasurer. *Only a public member may serve as the*
40 *president of the board.*

1 *SEC. 4. Section 5015.6 of the Business and Professions Code*
2 *is amended to read:*

3 5015.6. The board may appoint a person exempt from civil
4 service who shall be designated as an executive officer and who
5 shall exercise the powers and perform the duties delegated by the
6 board and vested in him or her by this chapter.

7 This section shall become inoperative on July 1, ~~2006~~ 2005,
8 and, as of January 1, ~~2007~~ 2006, is repealed, unless a later enacted
9 statute, which becomes effective on or before January 1, ~~2007~~
10 2006, deletes or extends the dates on which it becomes inoperative
11 and is repealed.

12 *SEC. 5. Section 5020 of the Business and Professions Code is*
13 *amended to read:*

14 5020. The board may, for the purpose of obtaining technical
15 expertise, appoint an administrative committee of not more than
16 13 licensees to ~~perform any of the following duties, and the~~
17 ~~committee may be vested with the powers of the board for those~~
18 ~~purposes:~~

19 ~~(a) To receive and investigate complaints and to conduct~~
20 ~~investigations or hearings, with or without the filing of any~~
21 ~~complaint, and to obtain information and evidence relating to any~~
22 ~~matter involving the conduct of licensees, as directed by the board~~
23 ~~or as directed by the executive officer pursuant to a delegation of~~
24 ~~authority by the board.~~

25 ~~(b) To receive and investigate complaints and to conduct~~
26 ~~investigations or hearings, with or without the filing of any~~
27 ~~complaint, and to obtain information and evidence relating to any~~
28 ~~matter involving any violation or alleged violation of this chapter~~
29 ~~by licensees, as directed by the board or as directed by the~~
30 ~~executive officer pursuant to a delegation of authority by the~~
31 ~~board.~~

32 ~~(c) In exercising the duties prescribed in this section, the~~
33 ~~provide advice and assistance related to the functions specified in~~
34 ~~Section 5103. The committee shall act only in an advisory capacity,~~
35 ~~shall have no authority to initiate any disciplinary action against~~
36 ~~a licensee, and shall only be authorized to report its findings from~~
37 ~~any investigation or hearing conducted pursuant to this section to~~
38 ~~the board, or upon direction of the board, to the executive officer.~~

39 *SEC. 6. Section 5063 of the Business and Professions Code is*
40 *amended to read:*

1 5063. (a) A licensee shall report to the board in writing of the
2 occurrence of any of the following events occurring on or after
3 January 1, 1997, within 30 days of the date the licensee has
4 knowledge of these events:

5 (1) The conviction of the licensee of any of the following:

6 (A) A felony.

7 (B) Any crime related to the qualifications, functions, or duties
8 of a public accountant or certified public accountant, or to acts or
9 activities in the course and scope of the practice of public
10 accountancy.

11 (C) Any crime involving theft, embezzlement,
12 misappropriation of funds or property, breach of a fiduciary
13 responsibility, or the preparation, publication, or dissemination of
14 false, fraudulent, or materially misleading financial statements,
15 reports, or information.

16 As used in this section, a conviction includes the initial plea,
17 verdict, or finding of guilt, pleas of no contest, or pronouncement
18 of sentence by a trial court even though that conviction may not be
19 final or sentence actually imposed until appeals are exhausted.

20 (2) The cancellation, revocation, or suspension of a certificate,
21 other authority to practice or refusal to renew a certificate or other
22 authority to practice as a certified public accountant or a public
23 accountant, by any other state or foreign country.

24 (3) The cancellation, revocation, or suspension of the right to
25 practice as a certified public accountant or a public accountant
26 before any governmental body or agency.

27 (b) *A licensee shall report to the board in writing the*
28 *occurrence of any of the following events occurring on or after*
29 *January 1, 2003, within 30 days of the date the licensee has*
30 *knowledge of the events:*

31 (1) *Any restatement of earnings by a client audited by the*
32 *licensee.*

33 (2) *Any civil action settlement or arbitration award against the*
34 *licensee where the amount or value of the settlement or arbitration*
35 *award is thirty thousand dollars (\$30,000) or greater and where*
36 *the licensee is not insured for the full amount of the award.*

37 (3) *Any notice of the opening or initiation of an investigation*
38 *by the Securities and Exchange Commission's Division of*
39 *Enforcement or its functional equivalent.*

1 (c) A licensee shall report to the board in writing, within 30
2 days of the entry of the judgment, any judgment entered on or after
3 January 1, 2003, against the licensee in any civil action alleging
4 any of the following:

5 (1) Dishonesty, fraud, gross negligence, or negligence.

6 (2) Breach of fiduciary responsibility.

7 (3) Preparation, publication, or dissemination of false,
8 fraudulent, or materially misleading financial statements, reports,
9 or information.

10 (4) Embezzlement, theft, misappropriation of funds or property,
11 or obtaining money, property, or other valuable consideration by
12 fraudulent means or false pretenses, or other errors or omissions.

13 (5) Any actionable conduct by the licensee in the practice of
14 public accountancy, the performance of bookkeeping operations,
15 or other professional practice.

16 (d) The report required by ~~subdivision~~ subdivisions (a), (b),
17 and (c) shall be signed by the licensee and set forth the facts which
18 constitute the reportable event. If the reportable event involves the
19 action of an administrative agency or court, then the report shall
20 set forth the title of the matter, court or agency name, docket
21 number, and dates of occurrence of the reportable event.

22 ~~(e)~~

23 (e) A licensee shall promptly respond to oral or written
24 inquiries from the board concerning the reportable events,
25 including inquiries made by the board in conjunction with license
26 renewal.

27 ~~(f)~~

28 (f) Nothing in this section shall impose a duty upon any licensee
29 to report to the board the occurrence of any of the events set forth
30 in subdivision (a), (b), or (c) either by or against any other
31 licensee.

32 SEC. 7. Section 5063.1 is added to the Business and
33 Professions Code, to read:

34 5063.1. Within 10 days of entry of a conviction described in
35 paragraph (1) of subdivision (a) of Section 5063 or a judgment
36 described in subdivision (c) of Section 5063 by a court of this state,
37 the court that rendered the conviction or judgment shall report that
38 fact to the board and provide the board with a copy of the
39 conviction or judgment and any orders or opinions of the court
40 accompanying or ordering the conviction or judgment.

1 SEC. 8. Section 5063.2 is added to the Business and
2 Professions Code, to read:

3 5063.2. Within 30 days of payment of all or any portion of any
4 civil action settlement or arbitration award against a licensee of
5 the board in which the amount or value of the settlement or
6 arbitration award is thirty thousand dollars (\$30,000) or greater,
7 any insurer or licensed surplus broker providing professional
8 liability insurance to that licensee shall report to the board the
9 name of the licensee, the amount or value of the settlement or
10 arbitration award, the amount paid by the insurer or licensed
11 surplus broker, and the identity of the payee.

12 SEC. 9. Section 5076 of the Business and Professions Code,
13 as added by Section 2 of Chapter 704 of the Statutes of 2001, is
14 repealed.

15 5076. ~~(a) In order to renew its registration, a firm providing~~
16 ~~attest services, other than a sole proprietor or small firm as defined~~
17 ~~in Section 5000, shall complete a peer review prior to the first~~
18 ~~registration expiration date after January 1, 2006, and no less~~
19 ~~frequently than every three years thereafter.~~

20 ~~(b) For purposes of this article, the following definitions apply:~~

21 ~~(1) "Peer review" means a study, appraisal, or review~~
22 ~~conducted in accordance with professional standards of the~~
23 ~~professional work of a licensee or registered firm by another~~
24 ~~licensee unaffiliated with the licensee or registered firm being~~
25 ~~reviewed. The peer review shall include, but not be limited to, a~~
26 ~~review of at least one attest engagement representing the highest~~
27 ~~level of service performed by the firm and may include an~~
28 ~~evaluation of other factors in accordance with requirements~~
29 ~~specified by the board in regulations.~~

30 ~~(2) "Attest services" include an audit, a review of financial~~
31 ~~statements, or an examination of prospective financial~~
32 ~~information, provided, however, "attest services" shall not~~
33 ~~include the issuance of compiled financial statements.~~

34 ~~(c) The board shall adopt regulations as necessary to~~
35 ~~implement, interpret, and make specific the peer review~~
36 ~~requirements in this section, including, but not limited to,~~
37 ~~regulations specifying the requirements for the approval of peer~~
38 ~~review providers, and regulations establishing a peer review~~
39 ~~oversight committee.~~

1 *SEC. 10. Section 5076 of the Business and Professions Code,*
2 *as added by Section 5 of Chapter 718 of the Statutes of 2001, is*
3 *amended to read:*

4 5076. (a) In order to renew its registration, a firm providing
5 attest services, other than a sole proprietor or a small firm as
6 defined in Section 5000, shall complete a peer review prior to the
7 first registration expiration date after January 1, 2006, and no less
8 frequently than every three years thereafter.

9 (b) For purposes of this article, the following definitions apply:

10 (1) "Peer review" means a study, appraisal, or review
11 conducted in accordance with professional standards of the
12 professional work of a licensee or registered firm by another
13 licensee unaffiliated with the licensee or registered firm being
14 reviewed. The peer review shall include, but not be limited to, a
15 review of at least one attest engagement representing the highest
16 level of service performed by the firm and may include an
17 evaluation of other factors in accordance with requirements
18 specified by the board in regulations.

19 (2) "Attest services" include an audit, a review of financial
20 statements, or an examination of prospective financial
21 information, provided, however, "attest services" shall not
22 include the issuance of compiled financial statements.

23 (c) The board shall adopt regulations as necessary to
24 implement, interpret, and make specific the peer review
25 requirements in this section, including, but not limited to,
26 regulations specifying the requirements for the approval of peer
27 review providers, and regulations establishing a peer review
28 oversight committee.

29 (d) *The board shall review whether to implement the program*
30 *specified in this section in light of the changes in federal and state*
31 *law or regulations or professional standards, and shall report its*
32 *findings to the Legislature and the department by September 1,*
33 *2003.*

34 *SEC. 11. Section 5100 of the Business and Professions Code*
35 *is amended to read:*

36 5100. After notice and hearing the board may revoke, suspend
37 or refuse to renew any permit or certificate granted under Article
38 4 (commencing with Section 5070) and Article 5 (commencing
39 with Section 5080), or may censure the holder of that permit or

1 certificate for unprofessional conduct which includes, but is not
2 limited to, one or any combination of the following causes:

3 (a) Conviction of any crime substantially related to the
4 qualifications, functions and duties of a certified public accountant
5 or a public accountant.

6 (b) A violation of Section 478, 498, or 499 dealing with false
7 statements or omissions in the application for a license, or in
8 obtaining a certificate as a certified public accountant or in
9 obtaining registration under this chapter or in obtaining a permit
10 to practice public accountancy under this chapter.

11 (c) Dishonesty, fraud, ~~or~~ gross negligence, *or repeated*
12 *negligent acts committed in the same or different engagements, for*
13 *the same or different clients, or any combination of engagements*
14 *or clients, each resulting in a violation of applicable professions*
15 *standards that indicate a lack of competency* in the practice of
16 public accountancy or in the performance of the bookkeeping
17 operations described in Section 5052.

18 (d) Cancellation, revocation or suspension of a certificate,
19 other authority to practice or refusal to renew the certificate or
20 other authority to practice as a certified public accountant or a
21 public accountant, or any other discipline by any other state or
22 foreign country.

23 (e) Violation of Section 5120.

24 (f) Willful violation of this chapter or any rule or regulation
25 promulgated by the board under the authority granted under this
26 chapter.

27 (g) Suspension or revocation of the right to practice before any
28 governmental body or agency.

29 (h) Fiscal dishonesty or breach of fiduciary responsibility of
30 any kind.

31 (i) Knowing preparation, publication or dissemination of false,
32 fraudulent, or materially misleading financial statements, reports,
33 or information.

34 (j) Embezzlement, theft, misappropriation of funds or
35 property, or obtaining money, property, or other valuable
36 consideration by fraudulent means or false pretenses.

37 (k) *The imposition of any discipline, penalty or sanction on a*
38 *registered public accounting firm or any associated person of such*
39 *firm, or both, or on any other holder of a permit, certificate, license*
40 *or other authority to practice in this state, by the Public*

1 *Accounting Oversight Board or the United States Securities and*
2 *Exchange Commission, or their successors or functional*
3 *equivalents, under the Sarbanes-Oxley Act of 2002 or other*
4 *federal legislation.*

5 *SEC. 12. Section 5103 is added to the Business and*
6 *Professions Code, to read:*

7 *5103. (a) Notwithstanding any other provision of law, the*
8 *board may inquire into any alleged violation of this chapter or any*
9 *other state or federal law, regulation, or rule relevant to the*
10 *practice of accountancy.*

11 *(b) The board, or its executive officer pursuant to a delegation*
12 *of authority from the board, is authorized to perform the following*
13 *functions:*

14 *(1) To receive and investigate complaints and to conduct*
15 *investigations or hearings, with or without the filing of any*
16 *complaint, and to obtain information and evidence relating to any*
17 *matter involving the conduct of licensees, as directed by the board,*
18 *or as directed by the executive officer pursuant to a delegation of*
19 *authority from the board.*

20 *(2) To receive and investigate complaints and to conduct*
21 *investigations or hearings, with or without the filing of any*
22 *complaint, and to obtain information and evidence relating to any*
23 *matter involving any violation or alleged violation of this chapter*
24 *by licensees, as directed by the board, or as directed by the*
25 *executive officer pursuant to a delegation of authority from the*
26 *board.*

27 *SEC. 13. Section 5108 is added to the Business and*
28 *Professions Code, to read:*

29 *5108. In connection with any investigation or action*
30 *authorized by this chapter, the board may issue subpoenas for the*
31 *attendance of witnesses and the production of papers, books,*
32 *accounts, documents and testimony pertinent or material to any*
33 *inquiry, investigation, hearing, proceeding, or action conducted in*
34 *any part of the state.*

35 *SEC. 14. Section 5109 is added to the Business and*
36 *Professions Code, to read:*

37 *5109. The expiration, cancellation, forfeiture, or suspension*
38 *of a license by operation of law or by order or decision of the board*
39 *or a court of law, or the voluntary surrender of a license by a*
40 *licensee shall not deprive the board of jurisdiction to proceed with*



1 any investigation of or action or disciplinary proceeding against
2 the license, or to render a decision suspending or revoking the
3 license.

4 SEC. 15. Section 5109.5 is added to the Business and
5 Professions Code, to read:

6 5109.5. The board shall report to the Legislature by
7 September 1, 2003, on problems associated with policing and
8 disciplining those accountants who violate Section 5100 or other
9 provisions of this chapter and who are employed by a large public
10 accounting firm. The board shall look critically at their
11 enforcement budget and identify costs of investigation and
12 prosecution of these disciplinary actions and propose ways to
13 cover costs of handling these types of cases.

14 ~~Code is amended to read:~~

15 ~~5000. — There is in the Department of Consumer Affairs the~~
16 ~~California Board of Accountancy, which consists of 11 members,~~
17 ~~six of whom shall be licensees, and five of whom shall be public~~
18 ~~members who shall not be licentiates of the board or registered by~~
19 ~~the board. The board has the powers and duties conferred by this~~
20 ~~chapter.~~

21 ~~The Governor shall appoint three of the public members, and the~~
22 ~~six licensee members as provided in this section. The Senate Rules~~
23 ~~Committee and the Speaker of the Assembly shall each appoint a~~
24 ~~public member. In appointing the six licensee members, the~~
25 ~~Governor shall appoint members representing a cross section of~~
26 ~~the accounting profession with at least two members representing~~
27 ~~a small public accounting firm. For the purposes of this chapter,~~
28 ~~a small public accounting firm shall be defined as a professional~~
29 ~~firm that employs a total of no more than four licensees as partners,~~
30 ~~owners, or full-time employees in the practice of public~~
31 ~~accountancy within the State of California.~~

32 ~~This section shall become inoperative on July 1, 2006, and as of~~
33 ~~January 1, 2007, is repealed, unless a later enacted statute, that~~
34 ~~becomes effective on or before January 1, 2007, deletes or extends~~
35 ~~the dates on which this section becomes inoperative and is~~
36 ~~repealed. The repeal of this section renders the board subject to the~~
37 ~~review required by Division 1.2 (commencing with Section 473).~~
38 ~~However, the review of the board shall be limited to only those~~
39 ~~issues identified by the Joint Legislative Sunset Review~~

1 ~~Committee and the board pursuant to implementation of new~~
2 ~~licensing requirements.~~

3 ~~SEC. 2. Section 5015.6 of the Business and Professions Code~~
4 ~~is amended to read:~~

5 ~~5015.6. The board may appoint a person exempt from civil~~
6 ~~service who shall be designated as an executive officer and who~~
7 ~~shall exercise the powers and perform the duties delegated by the~~
8 ~~board and vested in him or her by this chapter.~~

9 ~~This section shall become inoperative on July 1, 2006, and, as~~
10 ~~of January 1, 2007, is repealed, unless a later enacted statute,~~
11 ~~which becomes effective on or before January 1, 2007, deletes or~~
12 ~~extends the dates on which it becomes inoperative and is repealed.~~

13

